

**APPLICANTS:**  
**Todd L. Blazek and**  
**Dawn R. Peacher**

**BEFORE THE**  
**ZONING HEARING EXAMINER**  
**FOR HARFORD COUNTY**  
**BOARD OF APPEALS**

**REQUEST:** A variance to permit a shed within the required front yard setback in the R3 District

**HEARING DATE:** November 1, 2006

**Case No. 5567**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANT:** Todd L. Blazek

**CO-APPLICANT:** Dawn R. Peacher

**LOCATION:** 821 Woodmont Court – Magnolia Farms, Joppa  
Tax Map: 69 / Grid: 1C / Parcel: 138 / Lot: 50  
First (1<sup>st</sup>) Election District

**ZONING:** R3 / Urban Residential District

**REQUEST:** A variance, pursuant to Section 267-36B, Table VI, of the Harford County Code, to permit a shed to be located within the required 25 foot front yard setback (5 foot setback proposed), in the R3 District.

#### **TESTIMONY AND EVIDENCE OF RECORD:**

Todd L. Blazek, Co-Applicant, testified that he filed this application in order to secure permission to maintain a shed in its existing location. The subject property is a 7,529 square foot improved parcel located at 821 Woodmont Court, Magnolia Farms. The property is unusual in that it has two front yard setbacks. The back yard fronts on Fort Hoyle Road and, accordingly, is required to maintain a front yard setback to that side as well as the side along Woodmont Court. The shed erected by the Applicants is located approximately 6-1/2 feet off the side yard line and 5-1/2 feet off the rear yard line.

According to Mr. Blazek, Fort Hoyle Road is very heavily traveled. Two schools are located on Fort Hoyle Road opposite the Applicants' subdivision. Automobile, bus and pedestrian traffic is heavy. The Applicant states there is no buffer between his property and Fort Hoyle Road. A variance in Case No. 5481, decided in July, 2005, was granted to the Applicants to construct a 6 foot fence along the Fort Hoyle Road side of the Applicants' property. The Applicants eventually constructed such a fence.

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Mr. Blazek testified that his house is set back about 4 to 5 feet farther than other homes along the Court. This characteristic further reduces the size of his backyard.

The Applicants would normally be required to maintain a 25 foot front yard setback from the property line on Fort Hoyle Road. Mr. Blazek states that he cannot move the shed forward 25 feet because of the sloping nature of his backyard. He also argues that if moved forward the shed would prove to be an eye sore to his adjoining neighbor who would as a result be closer to the shed and therefore more impacted by it.

In support of this suggestion testified Joan Gardiner, the next door neighbor, who resides at 823 Woodmont Court. Mrs. Gardiner states that at present the only part of the shed she can see is the roof line. If the shed were moved forward 25 feet in order to avoid the necessity for a variance she would be able to see much more of the shed. Her deck is about 20 feet from her property line in common with the Applicants. The shed would, accordingly, be much closer to her and more visible if moved.

Next testified Alegra Kavlich of 819 Woodmont Court, the neighbor who lives on the side of the Applicants opposite that of Mrs. Gardiner. Ms. Kavlich is also the Secretary of the subdivisions' homeowners association. Ms. Kavlich opined that the shed should remain where it is because, if it were moved forward 20 feet, it would be difficult for the community watch group to detect criminal or unacceptable behavior behind the Applicants' property along Fort Hoyle Road.

Upon questioning, Mr. Blazek admitted that he knew the shed was in violation when he placed it at its current location. He had obtained a permit to locate the shed outside of the setback. He knowingly ignored that permit restriction and placed the shed in an improper location. He apologized for that, and was trying to rectify his error. He also indicated it would be difficult for him to move the shed forward.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune stated that the property had been subject to a prior Board of Appeals decision which granted a variance for a 6 foot high fence on the Fort Hoyle Road side of the property.

Mr. McClune stated that the location of schools on Fort Hoyle Road have nothing to do with the location of the shed. There is nothing unique about the property, or its topography. The shed can be moved forward, outside of the setback. No topographical feature exists on the property which would prohibit it from being moved forward. Mr. McClune also indicated that a similar variance had been denied for a property a few doors down from the subject property. Mr. McClune is concerned that if this variance were granted, with no justification, an improper precedent would be set for the area.

There was no other evidence or testimony presented in opposition.

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### **APPLICABLE LAW:**

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

*“Variances.*

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
  - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
  - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

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### **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

Unfortunately for the Applicants, this case is an example of how not to proceed with a planned improvement to one's property.

It is found that the Applicants own a relatively small parcel of property (7,529 square feet), and had earlier requested a variance to erect an attractive, 6 foot high vinyl fence in their backyard which would intrude into the applicable setback. Because their back yard fronts on Fort Hoyle Road, a variance for the fence was required. That variance was granted and the fence was erected.

The Applicants then, sometime after being granted the fence variance, decided to erect a storage shed.

The Applicants filed a request for a permit, as they should have done. The permit application, a copy of which is in the file, showed the original location of the shed to be the present location of the shed. However, the permit quite obviously indicates the original requested location was not to be allowed, as it was crossed out and a new location drawn in that was not within the 25 foot setback. The Applicants obviously agreed with this change to the permit, as no request for a variance was made at that time.

However, apparently not liking the permitted location of the shed the Applicants, and in complete disregard of the approved permit, constructed the shed 5 feet from the rear yard property line which violates the applicable setback by about 20 feet. The shed is also located some 20 feet behind the location noted and approved by the issued permit. The roof of the shed is visible from Fort Hoyle Road and it obviously did not take long for the Department of Planning and Zoning to realize the Applicants' disregard of the requirements of the permit.

There is quite simply no justifiable reason to grant the variance. The shed can be located farther away from the rear yard property line so as not to impact the front yard setback. There is available land to the side and rear of the Applicants' property in which the shed can be positioned. A review of photographs in the file show no topographic problem in moving the shed, contrary to the testimony of the Applicant. While the Applicant indicates it would be difficult for him to access the shed with equipment necessary to move it, the fact remains the shed was originally located there in some fashion, and if once located it can surely be relocated. Furthermore, the testimony of the neighbors that, if found to comply with applicable setback requirements the shed would be either a safety issue or visually intrusive, is not persuasive.

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It should also be noted that the area in which the Applicants reside is zoned R3/Urban Residential. This area is characterized by relatively small lots. The danger of establishing a precedent which would allow mandated setbacks to be violated for the flimsiest of reasons is obviously great, and is the primary reason the Department of Planning and Zoning objects to the variance request.

It is unfortunate that the Applicants have placed themselves in this situation. However, the expense of relocating the shed cannot be a reason for granting a variance. Certainly, the Applicants could and should have foreseen the difficulties they now face.

### **CONCLUSION:**

For the above reasons, it is recommended that the requested variance be denied.

Date: December 11, 2006

ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on JANUARY 10, 2007**